

Appl. No. 10/089,331
Atty. Docket No. 8166M
Amdt. dated April 8, 2004
Reply to Final Office Action of February 24, 2004
Customer No. 27752

REMARKS

The Specification has been amended to delete the paragraph beginning on page 6, line 6.

Claim 9 has been canceled without prejudice. Claims 1, 3, 6, 10, and 25 have been amended. Claims 1 and 25 have been amended to require that the reservoir further comprise a resealable channel in fluid communication with the reservoir. Support for the current Amendments to Claims 1 and 25 is found in the Specification on page 14, lines 13-26. Claim 3 has been amended to place the claim in proper Markush form. Claim 6 has been amended to require the flexible film dosing reservoir be foldable. Support for the current Amendment to Claim 6 is found in the Specification on page 9, lines 23-26, as originally filed. Claim 10 has been amended to change a claim dependency from cancelled Claim 9 to Applicants' independent Claim 1 and to provide proper antecedent basis for the terms included therein.

Claims 1-7 and 10-30 remain in the Application and are presented for the Examiner's review in light of the current Amendments and the following comments.

Drawings

The drawings received by the Office on October 24, 2003 were disapproved. Applicants, under separate cover, are providing new drawings to the Draftsperson pursuant to 37 C.F.R. §1.84. Applicants are also enclosing a courtesy copy of the revised drawings herein for the Examiner's review.

Specification

The Examiner has objected to Applicants' Specification as failing to provide proper antecedent basis for the term "a first substrate," as called for in Claims 29 and 30. Applicants respectfully direct the Examiner's attention to settled Federal Circuit case law. The court, in *Martin v. Meyer*, 823 F.2d 500, 3 U.S.P.Q.2d 1333 (Fed.Cir. 1987) stated, "It is not required that the application describe the claim limitations in greater detail than the invention warrants." The description must be sufficiently clear that persons of skill in the art will recognize that the applicant made the invention having those limitations. *Id.* Further, the court stated in *Fujikawa v. Wattanasin*, 93 F.2d 1559, 39 U.S.P.Q.2d 1895 (Fed.Cir. 1996),

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that an *ipsis verbis* disclosure is not necessary to satisfy the written description requirement. Instead, the disclosure need only reasonably convey to persons skilled in the art that the inventor had possession of the subject matter in question. *Id.* Additionally, M.P.E.P. §2173.05(f) states that, "A claim term which has no antecedent basis in the disclosure is not necessarily indefinite." Further, M.P.E.P. §2.163(I)(B) states that, "There is no *in haec verba* requirement in regard to support of claim limitations. Additionally, the original claims constitute their own description." See M.P.E.P. §2163. Therefore, it is Applicants' position, in light of well settled Federal Circuit case law and established PTO procedures, that Applicants' written description provides proper antecedent basis for all Applicants' claimed subject matter. Further, Applicants respectfully direct the Examiner to page 19, lines 5-8, of the Specification, as originally filed. Here, Applicants state, "A thermoplastic-based non-woven **substrate** such as a polypropylene, polyethylene, or polyester based non-woven substrate, for example, can effectively meet these criteria while also not absorbing water based product formulas." (Emphasis added) Since Applicants' use of the term "substrate" is provided in the Specification and that there is no *in haec verba* requirement to support claim terms, Applicants respectfully request withdrawal of the Examiner's objection to the Specification.

The Examiner has also objected to the disclosure for Applicants' duplication of the description of Fig. 59. Applicants have amended the Specification herein to delete the paragraph beginning on page 6, line 6. Applicants respectfully request withdrawal of the Examiner's objection to the Specification.

Rejections Under 35 U.S.C. §112

Turning now to the Examiner's rejection of the Claims, Claims 2, 13, and 14 have been rejected under 35 U.S.C. §112, ¶1 for not providing enablement for "a first substantially fluid-impervious barrier layer [is] located between said reservoir and said second internal surface of said second side," as now called for by Claim 2. Applicants respectfully traverse this rejection and direct the Examiner's attention to the Specification beginning on page 22, line 30 – page 23, line 3, and Fig. 2, as originally submitted. Specifically, Applicants state that, "In order to protect the hand of the user from contact with the product during the dispensing and/or dispersing operation, the applicators of the present invention can include a

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barrier layer 25, the interior of which defines the front inner surface 32 that faces the wearer's hand during use." (Emphasis added) Applicants respectfully request withdrawal of the Examiner's 35 U.S.C. §112, ¶1 rejection to Claims 2, 13, and 14.

Claims 13 and 14 have been rejected under 35 U.S.C. §112, ¶1 for not providing enablement for "a second substantially fluid-impervious barrier layer disposed between said first barrier layer and said second internal surface." Applicants respectfully traverse this rejection and direct the Examiner's attention to the Specification on page 28, lines 1-10 and Fig. 2, as originally filed. Specifically, Applicants state, "To protect the wearer's hand from contact with liquids absorbed by the back panel 26, it may be desirable for some applications to include **an optional additional fluid impervious barrier layer 27**, the interior of which defines the back inner surface 34 that faces the wearer's hand during use." (Emphasis added) In light of this disclosure, Applicants respectfully request withdrawal of the Examiner's 35 U.S.C. §112, ¶1 rejection to Claims 13 and 14.

Claim 7 has been rejected under U.S.C. §112, ¶1 for Applicants' use of the claim limitation "a first burst force when said reservoir is folded and a second burst force when said reservoir is unfolded." Applicants respectfully traverse this rejection. The Examiner is directed to the Specification on page 24, lines 14-20, as originally filed. Applicants state, "Folding the reservoir in effect crimps, or pinches off, the fluid pathway and is capable of withstanding significantly more internal pressure without leakage than would normally be desired for the frangible or rupturable seal relied upon for dispensing functionality." The Examiner is respectfully reminded that enablement is determined from the viewpoint of persons of skill in the field of the invention at the time the patent application was filed. *See Ajinomoto Co., Inc. v. Archer Daniels Midland Co.*, 228 F.3d 1338, 56 U.S.P.Q.2d 1332 (Fed.Cir. 2000). "Further, a patent must contain a description that enables one skilled in the art to make and use the claimed invention...." "An inventor need not, however, explain every detail since he is speaking to those skilled in the art." *See DeGeorge v. Bernier*, 768 F.2d 1318, 226 U.S.P.Q. 758 (Fed.Cir. 1985) (citing *In re Howarth*, 654 F.2d 103, 105, 210 U.S.P.Q. 689, 691 (C.C.P.A. 1981)). "Not every last detail is to be described, else patent specifications would turn into production specifications, which they were never intended to be." *See id.* citing *In re Gay*, 309 F.2d 769, 774, 50 C.C.P.A. 725, 733, 135 U.S.P.Q. 311, 316 (C.C.P.A. 1962). In light of the overwhelming case law in this matter, Applicants

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respectfully believe that one of skill in the art would understand that folding a reservoir would make the reservoir capable of withstanding significantly more internal pressure without leakage than would normally be desired. This provides a first burst force when the reservoir is folded and a second burst force when the reservoir is unfolded, as claimed in Applicants' Claim 7. Thus, Applicants believe Claim 7 satisfies the *DeGeorge* test and respectfully request withdrawal of the Examiner's 35 U.S.C. §112, ¶1 rejection.

Claims 9 and 10 have been rejected under 35 U.S.C. §112, ¶1. Applicants, by Amendment, have cancelled Claim 9 herein. Therefore, Applicants respectfully request withdrawal of the Examiner's rejection under 35 U.S.C. §112, ¶1 to Claims 9 and 10.

Applicants' Claim 10 was rejected under 35 U.S.C. §112, ¶1 for use of the claim limitation "further comprises a distribution head in fluid communication with said distal end of said distribution channel." Applicants respectfully traverse this rejection. Applicants respectfully direct the Examiner to the abundant disclosure of a distribution channel and its location with respect to the instant invention thereof; for example, page 14, line 13 – page 15, line 5 of the Specification, as originally filed. The Examiner is also respectfully directed to Applicants' Specification beginning on page 12, line 28 – page 13, line 4, and Figs. 4, 5, 6, 7, and 19-21. For example, Applicants state, "Fig. 21, for example, shows several 'fingers' 95 protruding from the dispensing head 91 thus allowing product to be delivered directly to various locations." In light of this abundant disclosure, Applicants respectfully request the Examiner to withdraw the rejection to Claim 10 under 35 U.S.C. §112, ¶1.

Claim 21 has been rejected under 35 U.S.C. §112, ¶1 for Applicants' use of the Markush group claiming, *inter alia*, "window cleaning compounds, bathroom cleaning compounds, kitchen cleaning compounds, furniture dusting and polishing compounds, body cleaning compounds, teeth cleaning compounds, car vinyl protectant compounds, herbicide compounds, skin lotion compounds, and baby clean-up compounds." Applicants are at a loss to understand the Examiner's rejection; to-wit: Example 1, presented on page 46 of the Specification, as originally presented, discusses a "glass cleaning mitt." Applicants respectfully believe that one of skill in the art would realize that a window comprises glass. Therefore, a glass cleaning compound would be applicable to a window cleaning operation. Likewise, Applicants' Example 2, presented on page 49 of the Specification, as originally filed, discloses a personal care mitt utilized for the purpose of beautifying, cleaning,

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moisturizing, conditioning, or otherwise treating the skin, hair, or nails. Product applications include, but are not limited to, face and body cleansers, toners, lotions, moisturizers, ointments, cosmetics/make-up, medicaments, and related topically applied treatments. *See*, p. 49, ll. 20-25. Therefore, Applicants respectfully believe the Specification to be enabling for the use of a "body cleaning compound." Likewise, Applicants respectfully believe that all of the elements of the Markush group presented in Claim 21 are present in Applicants' examples presented from page 46 to page 66 of the Specification, as originally filed. Therefore, Applicants respectfully submit that the Specification describes the claimed subject matter presented within Claim 21, thereby satisfying the *DeGeorge* test discussed *supra*. Therefore, Applicants respectfully request the Examiner to withdraw the rejection to Claim 21 under 35 U.S.C. §112, ¶1.

Claim 24 has been rejected under 35 U.S.C. §112, ¶1 for Applicants' use of the claim limitation "placing said first fluid-containing flexible film dosing reservoir in a predetermined location between said first and second webs." Applicants respectfully submit that the Specification reasonably conveys to one skilled in the relevant art that the inventors at the time the Application was filed had possession of the claimed invention; to-wit: Applicants state that, "Once the first and second webs are secured to form a composite web, at least one reservoir 114 (corresponding to the reservoir 30 of Fig. 2) is placed in an appropriate location in relation to the web dimensions so as to be located within the dimensions of the finished applicator." (Emphasis added) Additionally, on page 10, line 19, of the Specification, Applicants state, "[T]he reservoir 30 is positioned in the central portion 22 of the applicator 10." (Emphasis added) Read in this light, Applicants respectfully believe that there is sufficient written description for Applicants' Claim 24. Therefore, Claim 24 is not directed to new matter, and Applicants respectfully request withdrawal of the Examiner's rejection under 35 U.S.C. §112, ¶1.

Claims 29 and 30 have been rejected under 35 U.S.C. §112, ¶1 for Applicants' requirement that the product be released "sequentially" and "via multiple applications of pressure to said reservoir." Applicants respectfully direct the Examiner's attention to the Specification, as originally filed, beginning on page 10, line 30 – page 11, line 2. Specifically, Applicants state that, "In this location, the reservoir 30 is not located in a region of the applicator that would typically encounter forces in use (the application or pressure

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region), and the reservoir 30 would require activation by specifically applying force to the cuff region. Such an embodiment may be particularly advantageous where **progressive dispensing of discrete quantities of the product is desired** rather than an 'all at once' dispensing upon application of an initial force." (Emphasis added) In light of the above disclosure, Applicants respectfully submit that the subject claim limitation is supported by the Specification and therefore request the Examiner to withdraw the rejection to Claims 29 and 30 under 35 U.S.C. §112, ¶1.

Rejection Under 35 U.S.C. §102

Claims 1, 3-7, 9-12, 15, 16, 18-21, 23, and 25-27 have been finally rejected under 35 U.S.C. §102(b) over *Spees*, U.S. Patent No. 3,306,292. Applicants respectfully traverse this rejection. Previous arguments made with respect to the *Spees* reference will not be repeated for the sake of brevity but remain in effect. The Examiner is respectfully requested to consider the following additional matters with respect to the *Spees* reference:

1. Applicants' independent Claims 1 and 25 have been amended to require that the reservoir further comprise a resealable channel in fluid communication with the reservoir.
2. The product contained in the reservoir is releasable from the reservoir through the resealable channel and through the first side to the target surface.
3. The *Spees* reference is silent with respect to providing a resealable channel in fluid communication with a reservoir.

Due to these considerations, *Spees* fails to teach each and every element of Applicants' claimed invention, as now presented in independent Claims 1 and 25. Therefore, Applicants respectfully request withdrawal of the Examiner's 35 U.S.C. §102(b) rejection with respect to Claims 1 and 25. Further, because Claims 3-7, 10-12, 15, 16, 18-21, 23, and 26-27 all depend or indirectly from Applicants' independent Claims 1 or 25, they contain all of the respective limitations. Therefore, Applicants respectfully request withdrawal of the Examiner's rejection to Claims 1, 3-7, 9-12, 15, 16, 18-21, 23, and 25-17 under 35 U.S.C. §102(b) over *Spees*.

Claim 24 has been rejected under 35 U.S.C. §102(b) over Cohen, et al., U.S. Patent No. 5,957,605. Applicants respectfully traverse this rejection for the following reasons:

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1. Applicants' Claim 24 requires, *inter alia*, the steps of providing a first web corresponding to one of the first and second sides, providing a second web corresponding to the other of said first and second sides, placing said first fluid-containing flexible film dosing reservoir in a predetermined location between said first and second webs, securing the flexible film dosing reservoir relative to the webs, and cutting the applicator in a desired outline shape for the balance of the respective webs to define said applicator.

2. Thus, it can be seen from Applicants' Claim 24 that the step of cutting the applicator in a desired outline shape occurs **after** the steps that ultimately form the applicator.

3. As can be seen from the *Cohen* reference, the application device is formed from precut elements or roll stock formed into precut elements and **later** processed into an applicator. (Col. 8, ll. 9-14; Fig. 5)

4. As stated in the *Cohen* reference, if the materials are provided as sheet stock or roll stock, they must proceed to a process step where they are die cut into the necessary size and shape. The resulting elements are then formed into the applicator. (Col. 8, ll. 14-16)

5. Thus, it can be seen that the applicator of the *Cohen* reference is formed from components cut into a desired outline shape **prior** to assembly of the final applicator. This is sharply contrasted by Applicants forming the applicator into a desired outline shape **after** formation of the applicator structure.

Due to these considerations, *Cohen* fails to teach each and every element of Applicants' claimed invention. Therefore, Applicants respectfully request withdrawal of the Examiner's 35 U.S.C. §102(b) rejection with respect to Claim 24.

Rejection Under 35 U.S.C. §103

Claims 1-5, 11-14, 21, and 23 have been rejected under 35 U.S.C. §103(a) over *Schneider*, U.S. Patent No. 2,790,982 in view of *Ketner*, U.S. Patent No. 3,636,922. Previous arguments made with respect to the *Schneider* reference remain in effect but will not be repeated for the sake of brevity. The Examiner is respectfully requested to consider the following comments with respect to the *Schneider* and *Ketner* references:

1. Applicants' Claim 1, as now presented by Amendment, requires that the reservoir further comprise a resealable channel in fluid communication with said reservoir.

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2. Both the *Schneider* and *Ketner* references are silent with respect to providing a resealable channel in fluid communication with the reservoir, much less having any resealable characteristics with respect to the disclosed applicators.

3. In fact, both the *Schneider* and *Ketner* references disclose that the receptacle is readily broken when squeezed so as to liberate the material onto a surface being treated. (*Schneider*, Col. 1, l. 67 – Col. 2, l. 2; *Ketner*, Col. 2, ll. 54-57)

4. Both the *Schneider* and *Ketner* references are silent with regard to providing a reservoir with any resealable characteristics whatsoever, much less a reservoir comprising a resealable channel.

Because of these considerations, the *Schneider* and *Ketner* references do not suggest what Applicants claim as their invention. The *Schneider* and *Ketner* references fail to disclose, teach, suggest, or render obvious, either singly or in combination, every recited feature of Applicants' Claim 1. For this reason, Applicants respectfully request withdrawal of the Examiner's 35 U.S.C. §103(a) rejection to independent Claim 1. Further, because Claims 2-5, 11-14, 21, and 23 all depend directly or indirectly from Claim 1, they contain all of its limitations. Therefore, Applicants respectfully request withdrawal of the Examiner's 35 U.S.C. §103(a) rejection to Claims 2-5, 11-14, 21, and 23.

Claims 25-30 have been rejected under 35 U.S.C. §103(a) over Gerber, et al., U.S. Patent No. 2,209,914 in view of *Spees*. Previous arguments made with respect to both the *Gerber* and *Spees* references remain in effect but will not be repeated for the sake of brevity. The Applicants respectfully request the Examiner to consider the following comments with regard to the *Gerber* and *Spees* references:

1. Applicants' newly amended Claim 25 currently requires a rupturable laminate film reservoir comprising a resealable channel in fluid communication with the reservoir.

2. Applicants' Claim 29 requires, *inter alia*, a flexible film dosing reservoir comprising at least one frangible seal.

3. Applicants' Claim 30 requires, *inter alia*, a flow restriction layer disposed between the reservoir and the first substrate.

4. Both the *Gerber* and *Spees* references are silent with respect to providing a rupturable laminate film reservoir comprising a resealable channel in fluid communication with the reservoir.

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5. Both the *Gerber* and *Spees* references are silent with respect to providing a flexible film dosing reservoir comprising at least one frangible seal.

6. In fact, the *Spees* reference provides for a thermoplastic material provided with a slit or parting in the non-thermo plastic portion of the laminated sheet material, thereby causing a rupture of the laminate material rather than a bursting of any seal provided therein. (See Col. 2, l. 67 – Col. 3, l. 14)

7. Therefore, Applicants believe that the *Spees* reference never contemplated providing a reservoir having at least one frangible seal.

8. With respect to Applicants' Claim 30, Applicants claim an applicator comprising, *inter alia*, a flow restriction layer disposed between the reservoir and the first substrate. In this way, the product is sequentially released from the reservoir to the first substrate via multiple applications of pressure to the reservoir. Thus, a product is released from the reservoir through the flow restriction layer to the first substrate and onto the target surface.

9. As described in the *Gerber* reference, a medication 1a contained within capsule 1 is disposed to a target surface via pad 3. (Col. 2, ll. 29-35)

10. The impervious or partially impervious strip or piece of material shown in Fig. 3 of the *Gerber* reference is disposed opposite the application side of the applicator. This is to limit (stop) the egress of medical or odiferous material to the face of the pad and likewise prevent excretions absorbed by the opposite face from entirely permeating the entire pad. (Col. 4, ll. 9-17) Thus, as shown in the *Gerber* reference, the flow restriction layer is not disposed between the reservoir and the first substrate; rather, it is disposed between the reservoir and the backside therefor.

Because of these considerations, the *Gerber* and *Spees* do not suggest what Applicants claims as their invention. The *Gerber* and *Spees* references fails to disclose, teach, suggest, or render obvious, either singly or in combination, every recited feature of Applicants' independent Claims 25, 29, and 30. For these reasons, Applicants respectfully request withdrawal of the Examiner's 35 U.S.C. §103(a) rejections to Claims 25, 29, and 30. Further, because Claims 26-28 all depend directly or indirectly from Applicants' independent Claim 25, they contain all of its limitations. Therefore, Applicants respectfully request withdrawal of the Examiner's 35 U.S.C. §103(a) rejection to Claims 26-28 accordingly.

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Conclusion

Based on the foregoing, it is respectfully submitted that each of Applicants' remaining claims is in condition for allowance and favorable reconsideration is requested.

This response is timely filed pursuant to the provisions of 37 C.F.R. §1.8 and M.P.E.P. §512, and no fee is believed due. However, if any additional charges are due, the Examiner is hereby authorized to deduct such charge from Deposit Account No. 16-2480 in the name of The Procter & Gamble Company.

Respectfully submitted,
GRUENBACHER, ET AL.

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